

DECISION

Dispute Codes FF, MNR, MNSD, OPR

Introduction

Some documentary evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$1110.00, a request that the respondent bear the \$50.00 cost of the filing fee, and a request of the landlord be allowed to retain the full security deposit towards the claim.

Background and Evidence

The applicant testified that:

- The tenant failed to pay the February 2011 rent and as a result a Notice to End Tenancy was served on the tenants on February 2, 2011.
- The tenant did not pay the February 2011 rent until February 16, 2011.
- He had also given the tenant a \$370.00 rent reduction; however the owner of the property disagrees with the reduction and therefore wants the tenant to pay that.

The applicant is therefore requesting an Order of Possession, and order for the \$370.00 rent reduction with which the owner disagrees.

The respondent testified that:

- She did fail to pay the February 2011 rent on time, and she did receive a Notice to End Tenancy on February 2, 2011.
- She did not have the rent at that time but informed the landlord that she could pay the rent on February 16, 2011 and the landlord agreed to accept that rent.
- The landlord's agent gave her a previous rent reduction of \$370.00, and therefore she does not believe she should have to pay that rent.

The respondent therefore believes that the requests for the Order of Possession and monetary order should both be denied.

Analysis

The tenant admits that the February rent was not paid on February 1, 2011 and that she received a Notice to End Tenancy for non-payment of rent on February 2, 2011. When a tenant receives a Notice to End Tenancy for non-payment of rent the tenant has five days to either pay that rent which, would then void the Notice to End Tenancy, or apply for dispute resolution to have the notice cancelled. In this case the tenant did neither and therefore is deemed to have accepted the end of the tenancy.

The tenant did pay the full February 2011 rent however not until February 16, 2011, well past the five day time limit. Therefore even though the rent has been paid, the landlord still has the right to an Order of Possession.

I therefore allow the landlords request for an Order of Possession, and order recovery of the filing fee.

I will not however allow the landlords claim for the \$370.00 rent reduction that he gave the tenant. He may not have had the owner's permission to give the rent reduction however he, as the landlord's agent, did give the rent reduction and the tenant therefore is no longer liable for that rent.

Conclusion

I have issued an Order of Possession for 1 p.m. on February 28, 2011.

I further order that the landlord may retain \$50.00 of the security deposit to cover the cost of the filing fee.

The landlord's monetary claim for outstanding rent is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 24, 2011.

Residential Tenancy Branch